

## **SPECIAL MEETING OF BERKELEY COUNTY COUNCIL**

**June 29, 2012**

A **Special Meeting of Berkeley County Council** was held on **Friday, June 29, 2012 at 10:10 a.m.**, by way of a teleconference in the Assembly Room, Berkeley County Administration Building, 1003 Highway 52, Moncks Corner, South Carolina.

**PRESENT:** Mr. Daniel W. Davis, Supervisor, Chairman; Mr. Robert O. Call, Jr., Council Member District No. 3; Mr. Dennis L. Fish, Council Member District No. 5; Mr. Jack H. Schurlknight, Council Member District No. 6; Ms. Nicole Scott Ewing, County Attorney; and Ms. Catherine Windham, Interim Clerk to Council. Council Member Callanan was absent from this meeting.

**PRESENT (TELECONFERENCE):** Mr. Phillip Farley, Council Member District No. 1; Mrs. Cathy S. Davis, Council Member District No. 4; Mr. Steve C. Davis, Council Member District No. 8, Vice Chairman; and Mr. Caldwell Pinckney, Jr., Council Member District No. 7.

*In accordance with the Freedom of Information Act, the electronic and print media were duly notified.*

### **CALL TO ORDER**

Chairman D. Davis called the meeting to order and asked if this meeting had been properly noticed.

Ms. Windham responded to the affirmative. Ms. Windham also gave roll call to establish those present via teleconference.

Mr. Colin Martin gave the invocation and Mr. Dennis Fish led in the Pledge of Allegiance to the Flag of the United States of America.

### **A. 2012-2013 Budget**

Chairman D. Davis: "Before we take up our item for discussion today at the meeting on Monday night the issue of electronic communication as a part of a Council Meeting was raised and an objection was raised by I think, Mr. Callanan. We've done considerable research in the meantime with the staff, the Legal staff of the South Carolina Association of Counties and I'd like to call on Nicole Ewing to clear that up and establish what actually the law is."

County Attorney N. Ewing: "Thank you, Mr. Chairman. As you stated, Mr. Callanan did raise this issue and said that he'd spoken with someone at the Association of Counties. I never did get the name of whom he spoke with. But, my own initiative I spoke with Jenna Stephens, Cliff Scott and Robert Croom at the Association of Counties to discuss this matter and they are in agreement with me that Council Members can participate in properly noticed Council Meetings via electronic communications, such as the telephone. They relied on Section 30-4-

20(d) of the FOIA Act. The Freedom of Information Act which defines a meeting and they also pointed me to a court case Weideman v. Town of Hilton Head Island, which can be found at 330 S.C. 532. So, in my opinion and I believe, in the opinion of South Carolina Association of Counties, Council Members participating via telephone such as we are doing today; is completely legal and authorized.”

Chairman D. Davis: “Thank you. Ok, the ...”

*(Connecting Mr. Farley, again via teleconference)*

Chairman D. Davis: “Ok, I think we still have everybody with us?”

IT Director Mr. Boling: “Everybody except for Mr. Callanan and I’ll continue to try.”

Councilman S. Davis: “Mr. Chairman?”

Chairman D. Davis: “Mr. Davis?”

Councilman S. Davis: “As you know, at the immediate proceedings, County Council Meeting held on Monday, June 25<sup>th</sup>. I voted with the prevailing side that defeated the third reading of the 2012-2013 Budget as presented by the Supervisor. I now move to reconsider this matter.”

Chairman D. Davis: “You move to reconsider it?”

Councilman S. Davis: “That’s correct; I now move to reconsider this matter. Since that’s the issue. That’s one of the issues that’s before this Special Council.”

Chairman D. Davis: “Alright, we have a motion. Is there a second?”

Councilman J. Schurlknight: “Second.”

Councilman D. Fish: “Mr. Chairman?”

Chairman D. Davis: “Discussion, Mr. Fish?”

Councilman D. Fish: “Yeah, this action cannot be taken. That’s an illegal action because in the Model Rules that you adopted last January, that reconsideration can only be at the same time of the meeting. It’s been four days since that was adopted. That cannot be done at this time according to the Rules.”

Chairman D. Davis: “Right, actually I don’t think that’s correct. I would like to call on our legal counsel Ms. Ewing to clarify that.”

County Attorney N. Ewing: "Yes sir, thank you, as you know we adopted these ...Pardon?"

Mrs. Melissa Harris: "Can you tell him to please mute it? I can't hear anything."

Councilman Farley: "Hello?"

IT Director Mr. Boling: "Mr. Farley, is there something behind you, ringing? There we go."

Councilman S. Davis: "Not me."

Councilman Farley: "I couldn't hear the Attorney."

Councilwoman C. Davis: "I couldn't either."

Councilman S. Davis: "Can you hear me now?"

Councilman Farley: "I was talking about the other Attorney."

Councilman S. Davis: "Ok."

Chairman D. Davis: "Go ahead Ms. Ewing."

County Attorney N. Ewing: "As you all may recall in January of 2011 we did adopt the South Carolina Association of Counties Model Rules of Parliamentary Procedure and I anticipated that some sort of objection may come up or question regarding the Motion to Reconsider. So, when I spoke to them about the FOIA issue that I just addressed I also spoke with them about the Motion to Reconsider matters to make sure that I had it clear in my head and they also agreed with me that a Motion to Reconsider is proper at this time; based on our County Rules and the supporting rules of Robert's Rules of Order."

Chairman D. Davis: "Thank you, Ms. Ewing."

Councilman Fish: "Mr. Chairman?"

Chairman D. Davis: "Mr. Fish?"

Councilman Fish: "I'm reading quote unquote, right from the rules and it said that third reading to an ordinance may be reconsidered only at the same meeting at which the third reading was adopted."

County Attorney N. Ewing: "I'm sorry, can you show me where?"

Councilman Fish: "So, I don't understand how you're talking that it can be changed. This is right out of the Model Rules. This is right out of there. How can you change that?"

County Attorney N. Ewing: "Yes, Mr. Fish, the language that you're reading it says and I'll just go ahead and read the rule that, portion of the rule that's applicable, it says: The motion to reconsider allows County Council to debate whether or not to overturn a decision made at the meeting that is in progress or at the immediately preceding meeting, provided however, that third reading to an ordinance may be reconsidered only at the same meeting in which the third reading was adopted. We have not adopted third reading. Therefore, motion to reconsider is proper."

Councilman Fish: "What do you mean we haven't adopted. It was...I mean it was voted and voted down. It's dead."

County Attorney N. Ewing: "Adopted and dead are not the same thing."

Chairman D. Davis: "Adopted means that it was, it passed successfully. Any other?"

Councilman Fish: "Mr. Chairman?"

County Attorney N. Ewing: "And just to clarify that, I spoke specifically with the South Carolina Association of Counties about that wording as Mr. Cliff Scott did draft that language. So, I wanted to get his opinion on what it meant and he also agreed with my interpretation of the Rule."

Chairman D. Davis: "Any other discussion or comments?"

Councilman S. Davis: "Mr. Chairman?"

Chairman D. Davis: "Mr. Davis?"

Councilman S. Davis: "Just for discussion sake. It was stated in the local newspaper that I had thrown a curve and that was a pretty inaccurate description. But, what the local newspaper had failed to disclose is that I had been previously a pitcher, a sinker, because I thought I had the support of certain County Council Members to agreed to a small .68 % millage sunset source of funding for the Trident Science Building. But, unbeknown it didn't transpire. Therefore, that sinker precipitated a curve, but I want to say to all the hard working members of your staff, Ms. Kace and otherwise, who did a diligent job to put the budget together. In hind set, it would have been tremendous selfishness on my part to create the uncertainty that certain members, of... employees of the County have stopped me in the different hallways concerning about what is going to be the status of their checks in the coming weeks. I know that a lot of work went into the 2012-2013 Budget and we had the workshops. And so, I just wanted them to understand that this is part so, my motivation for this reconsideration. I just want the record to reflect that."

Chairman D. Davis: "Alright, thank you Mr. Davis."

Councilman Schurlknight: "Mr. Chairman?"

Chairman D. Davis: "Mr. Schurlknight?"

Councilman Schurlknight: "Mr. Chairman, I just want to make a statement also. That I think one of the sticking points on this budget was the funding for Trident Tech Nursing School and our support of that financially and I just wanted to let everybody know that I will make an attempt to have something on my agenda on the Finance Committee by next month so we will address the funding of Trident Tech. That's not, by no means, a dead issue at this time."

Chairman D. Davis: "Thank you, Mr. Schurlknight. Any other discussion?"

Councilman Fish: "Mr. Chairman, are you ready to call for the vote?"

Chairman D. Davis: "I am ready."

Councilman Fish: "Ok, I'm not going to be a party of this illegal action. You make the rules as you see fit. You change the rules in January, you changed them now. We didn't get the budget until second reading. You had a workshop to where it was Show-and-Tell, where you told us. We've not had an opportunity as a Council to meet and discuss the budget. There's a number of open issues. I just want you to know that I will not be a part of this illegal action. (*Mr. Fish exited the Council Meeting*)."

Chairman D. Davis: "Mr. Fish, this is not an illegal action. It's been vetted very carefully and I will also, want to correct your statement about the workshops. We offered as many workshops as Council wanted to work on the budget and there was only one meeting that we had and no requests for any additional meetings. So, with that I'll call for the question. All those in favor of adoption of 2012..."

County Attorney N. Ewing: "Mr. Chairman, we have to vote on the Motion to Reconsider first."

Chairman D. Davis: "Oh, I'm sorry. Ok, that's right. The Motion to Reconsider, all those in favor signify by saying Aye (Ayes) All those opposed? (Nay) We have one Nay."

It was moved by Councilman S. Davis and seconded by Councilman Schurlknight to approve a Motion to Reconsider Bill No. 12-13, adoption of the 2012-2013 Berkeley County Budget. The motion was passed by majority voice vote of Council. Councilwoman C. Davis voted Nay.

Chairman D. Davis: "Now, that brings us to the main motion which is adoption of the 20...of Bill No. 12-13, which is the adoption of the 2012-2013."

**"BILL NO. 12-13, AN ORDINANCE PROVIDING APPROPRIATIONS FOR THE FISCAL YEAR BEGINNING JULY 1, 2012 AND ENDING JUNE 30,**

2013 FOR **BERKELEY COUNTY**; TO PROVIDE FOR LEVY OF TAXES ON ALL TAXABLE PROPERTY IN BERKELEY COUNTY FOR ALL COUNTY PURPOSES; TO PROVIDE FOR THE EXPENDITURES OF SAID TAXES AND OTHER REVENUES COMING INTO THE COUNTY FOR THE FISCAL YEAR; AND TO AMEND THE CODE OF ORDINANCES, BERKELEY COUNTY, SOUTH CAROLINA, SETTING RATES, CHARGES AND PENALTIES FOR WATER AND SEWER AND SOLID WASTE SERVICE BY **BERKELEY COUNTY WATER AND SANITATION.**”

Councilman S. Davis: “I so move.”

Councilman Schurlknight: “Second.”

Chairman D. Davis: “We have a motion and second. Any discussion? (No Response) All those in favor?”

County Attorney N. Ewing: “Mr. Chairman, we might want to take a roll call vote, just because of the telephone issue.”

Chairman D. Davis: “That’s a good idea. Madam Clerk?”

Mrs. Catherine Windham: *(The roll was called and the votes cast as follows:)*

Mr. Farley:	Nay
Mr. Callanan:	(Not Present-No Vote)
Mr. Call:	Aye
Ms. C. Davis:	Nay
Mr. Fish:	(Not Present-No Vote)
Mr. Schurlknight:	Aye
Mr. Pinckney:	Aye
Mr. S. Davis:	Aye

Councilman Schurlknight: “Madam Clerk that was an Aye vote for me.”

Mrs. Catherine Windham: “Ok, that’s four Ayes to two Nays. Motion carries.”

Chairman D. Davis: “Motion is... Budget is adopted.”

It was moved by Councilman S. Davis and seconded by Councilman Schurlknight to approve Bill No. 12-13 for Third Reading. The motion passed by majority voice vote of Council. Council Members C. Davis and P. Farley voted Nay. (A copy of Ordinance No. 12-06-21 is attached to these minutes.)

Chairman D. Davis: “I’ll entertain a motion...”

Councilman S. Davis: "Move for adjournment."

Councilman Call: "Second."

Chairman D. Davis: "I have a motion and a second. All those in favor say Aye (Ayes). All opposed Nay? (No Response) We stand adjourned."

It was moved by Councilman S. Davis and seconded by Councilman Call to **adjourn** the Special Meeting of County Council. The motion passed by unanimous voice vote of Council.

The meeting ended at 10:23 a.m.

July 23, 2012  
Date Approved

**NOTICE OF SPECIAL MEETING OF BERKELEY COUNTY COUNCIL**

Chairman: Mr. Daniel W. Davis, Supervisor  
Vice Chairman: Mr. Steve C. Davis, District No. 8

Members: Mr. Phillip Farley, District No. 1  
Mr. Timothy J. Callanan, District No. 2  
Mr. Robert O. Call, Jr., District No. 3  
Ms. Cathy E. Davis, District No. 4  
Mr. Dennis L. Fish, District No. 5  
Mr. Jack H. Schurlknight, District No. 6  
Mr. Caldwell Pinckney Jr., District No. 7

A **Special Meeting** of **Berkeley County Council** will be held on **Friday, June 29, 2012** at **10:00 p.m.**, in the Supervisor's Conference Room, Berkeley County Administration Building, 1003 Highway 52, Moncks Corner, South Carolina.

**AGENDA**

**CALL TO ORDER**

*In accordance with the Freedom of Information Act, the electronic and print media were duly notified.*

**A. 2012-2013 Budget**

**ADJOURNMENT**

June 27, 2012  
S/Catherine R. Windham  
Interim Clerk of County Council